

4/12/18

6:01 P.M.

Chapter No. 446
18/SS01/R77SG
AK / TB / RC

SENATE BILL NO. 2473

Originated in Senate

Liz Welch

Secretary

SENATE BILL NO. 2473

AN ACT TO AMEND SECTION 89-7-27, MISSISSIPPI CODE OF 1972, TO REQUIRE A TENANT TO BE REMOVED FROM THE PREMISES WHEN THE TENANT HOLDS OVER WITHOUT THE LANDLORD'S PERMISSION OR DEFAULTS ON THE RENT PAYMENT; TO ALLOW NOTICE TO A HOLDOVER OR DEFAULTING TENANT VIA EMAIL OR TEXT MESSAGE IF SO SPECIFIED IN THE WRITTEN AGREEMENT BETWEEN THE PARTIES; TO AMEND SECTION 89-7-29, MISSISSIPPI CODE OF 1972, TO REQUIRE REMOVAL OF A TENANT FOR NONPAYMENT OF RENT AND ANY LATE FEES; TO AMEND SECTION 89-7-39, MISSISSIPPI CODE OF 1972, TO PROHIBIT HEARINGS FOR EVICTION DUE TO THE NONPAYMENT OF RENT TO BE CONTINUED BEYOND 45 DAYS; TO AMEND SECTION 89-7-45, MISSISSIPPI CODE OF 1972, TO REQUIRE ANY LATE FEES ACCRUED UNDER THE RENTAL AGREEMENT TO ALSO BE PAID BEFORE THE ISSUANCE OF A WARRANT WILL BE STAYED; TO REMOVE THE ABILITY OF A TENANT TO GIVE SATISFACTORY SECURITY INSTEAD OF PAYING THE RENT DUE; TO AMEND SECTION 89-7-49, MISSISSIPPI CODE OF 1972, TO REMOVE THE DISCRETION OF THE JUSTICE COURT JUDGE TO PUT THE LANDLORD IN POSSESSION OF THE PREMISES WHEN A TENANT FAILS TO PAY RENT; TO AMEND SECTION 89-8-7, MISSISSIPPI CODE OF 1972, TO EXPAND THE DEFINITION OF "RENT" TO INCLUDE ANY LATE FEES THAT A DEFAULTING TENANT IS REQUIRED TO PAY UNDER THE RENTAL AGREEMENT; TO AMEND SECTION 89-8-13, MISSISSIPPI CODE OF 1972, TO REVISE THE NOTICE REQUIRED TO BE GIVEN WHEN A RENTAL AGREEMENT IS BREACHED FROM 30 DAYS TO 14 DAYS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 89-7-27, Mississippi Code of 1972, is amended as follows:

89-7-27. A tenant or lessee at will or at sufferance, or for part of a year, or for one * * * or more years, of any houses, lands, or tenements, and the assigns, undertenants, or legal representatives of such tenant or lessee, * * * shall be removed from the premises by the judge of the county court, any justice of the peace of the county, or by the mayor or police justice of any city, town, or village where the premises, or some part thereof, are situated, in the following cases, to wit:

First. Where such tenant shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his term, without the permission of the landlord.

Second. After any default in the payment of the rent pursuant to the agreement under which such premises are held, and when complete satisfaction of the rent and any late fees due cannot be obtained by distress of goods, and three (3) days' notice, in writing, requiring the payment of such rent or the possession of the premises, shall have been served by the person entitled to the rent on the person * * * who owes the rent.

Third. If a written agreement between the landlord and tenant exists, any event calling for eviction in the agreement may trigger the eviction process under this section. Notice of default by email or text message is proper if the party has agreed in writing to be notified by that means.

SECTION 2. Section 89-7-29, Mississippi Code of 1972, is amended as follows:

89-7-29 The landlord or lessor, his legal representatives, agents, or assigns, in order to have the benefit of such proceedings, shall * * * present to the court a sworn affidavit that contains the facts which, according to * * * Section 89-7-27, * * * require the removal of the tenant, describing * * * in the affidavit the premises claimed and the amount of rent and any late fees due and when payable, and that the necessary notice has been given to terminate such tenancy. These facts shall be based on the rental agreement signed or agreed to by the landlord or lessor, his legal representatives, agents, or assigns, and the tenant. Upon receipt of the sworn affidavit, the court shall initiate the removal of the tenant for the nonpayment of rent or other event of default contained in any written agreement between the parties, as specified in the affidavit.

SECTION 3. Section 89-7-39, Mississippi Code of 1972, is amended as follows:

89-7-39. The * * * court may, at the request of either party, adjourn the hearing from time to time, * * * a single adjournment not to exceed ten (10) days, except by consent, and may issue subpoenas and attachments to compel the attendance of witnesses. However, in hearings for eviction, no adjournment shall extend the entire hearing beyond forty-five (45) days from the date the eviction action was filed.

SECTION 4. Section 89-7-45, Mississippi Code of 1972, is amended as follows:

89-7-45. If the proceedings be founded upon the nonpayment of rent, the issuance of the warrant for the removal of the tenant shall be stayed if the person owing the rent shall, before the warrant * * * is actually issued, pay the full and complete amount of rent due, including any late fees that have accrued as a result of the nonpayment of rent as provided in the rental agreement, and the costs of the proceedings, * * * to the person entitled to the rent, for the payment thereof and costs in ten (10) days; and if the rent and costs shall not be paid accordingly, the warrant shall then issue as if the proceedings had not been stayed.

SECTION 5. Section 89-7-49, Mississippi Code of 1972, is amended as follows:

89-7-49. If a tenant of lands, being in arrear for rent, shall desert the demised premises and leave the same uncultivated or unoccupied, so that a sufficient distress cannot be had to satisfy the arrears of rent, any constable of the county may, at the request of the landlord, and upon due proof by affidavit that the premises have been deserted, leaving rent in arrear, and not sufficient distress thereon, go upon and view the premises, and upon being satisfied that the premises have been so deserted, he shall affix a notice, in writing, upon a conspicuous part of the premises, stating what day he will return to take a second view thereof, not less than five (5) days nor more than fifteen (15) days thereafter, and requiring the tenant then to appear and pay the rent and any late fees due. At the time specified in the

notice the constable shall again view the premises, and if, upon second view, the tenant shall not pay the rent and any late fees due, or there shall not be sufficient distress upon the premises, then the justice court * * * shall immediately or within forty-eight (48) hours put the landlord in possession of the premises, and the lease thereof to such tenant shall become void. The tenant may appeal to the circuit court from the proceedings of the justice court at any time within thirty (30) days after possession delivered, by serving notice in writing thereof upon the landlord, and by giving bond, with sufficient sureties, to be approved by the justice court, for the payment to the landlord of the costs of appeal, which may be adjudged against the tenant; and thereupon the justice court shall return the proceedings before him to the next term of the circuit court, and * * * the court shall, at the return term, examine the proceedings in a summary way, and may order restitution to be made to the tenant, with costs of appeal, to be paid by the landlord; or in case of affirming the proceedings, shall award costs against the tenant and sureties in his bond.

SECTION 6. Section 89-8-7, Mississippi Code of 1972, is amended as follows:

89-8-7. (1) Subject to additional definitions contained in subsequent sections of this chapter which apply to specific sections or parts thereof, and unless the context otherwise requires, in this chapter:

(a) "Building and housing codes" includes any law, ordinance. or governmental regulation concerning fitness for habitation, construction, maintenance, operation. occupancy or use of any premises or dwelling unit;

(b) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;

(c) "Good faith" means honesty in fact in the conduct of the transaction concerned and observation of reasonable community standards of fair dealing;

(d) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, or the agent representing such owner, lessor or sublessor;

(e) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(f) "Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession;

(g) "Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances therein, and

grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(h) "Rent" means all payments to be made to the landlord under the rental agreement, including any late fees that are required to be paid under the rental agreement by a defaulting tenant;

(i) "Rental agreement" means all agreements, written or oral, except to the extent an agreement under this chapter or Chapter 7, Title 89, Mississippi Code of 1972, must be in writing, and valid rules and regulations adopted under Section 89-8-11 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(j) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(k) "Qualified tenant management organizations" means any organization incorporated under the Mississippi Nonprofit Corporation Act, a majority of the directors of which are tenants of the housing project to be managed under a contract authorized by this section and which is able to conform to standards set by the United States Department of Housing and Urban Development as capable of satisfactorily performing the operational and management functions delegated to it by the contract.

(2) For purposes of giving any notice required under this chapter, notice given to the agent of the landlord is equivalent to giving notice to the landlord. The landlord may contract with

an agent to assume all the rights and duties of the landlord under this chapter; provided, however, that such a contract does not relieve the landlord of ultimate liability in regard to such rights and duties.

SECTION 7. Section 89-8-13, Mississippi Code of 1972, is amended as follows:

89-8-13. (1) If there is a material noncompliance by the tenant with the rental agreement or the obligations imposed by Section 89-8-25, the landlord may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(2) If there is a material noncompliance by the landlord with the rental agreement or the obligations imposed by Section 89-8-23, the tenant may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(3) The nonbreaching party may deliver a * * * notice to the party in breach in writing, or by email or text message if the breaching party has agreed in writing to be notified by email or text message, specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than * * * fourteen (14) days after receipt of the notice if the breach is not remedied within a reasonable time not in excess of * * * fourteen (14) days; and the rental agreement shall

terminate and the tenant shall surrender possession as provided in the notice subject to the following:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise, and the breaching party adequately remedies the breach * * * before the date specified in the notice, the rental agreement shall not terminate;

(b) In the absence of a showing of due care by the breaching party, if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the nonbreaching party may terminate the rental agreement upon at least fourteen (14) days' * * * notice in writing, or by email or text message if the breaching party has agreed in writing to be notified by email or text message, specifying the breach and the date of termination of the rental agreement;

(c) Neither party may terminate for a condition caused by his own deliberate or negligent act or omission or that of a member of his family or other person on the premises with his consent.

(4) If the rental agreement is terminated, the landlord shall return all prepaid and unearned rent and security recoverable by the tenant under Section 89-8-21.

(5) * * * (a) If the material noncompliance by the tenant is the nonpayment of rent pursuant to the rental agreement, the landlord shall not be required to deliver * * * fourteen (14)

days' * * * notice as provided by subsection (3) of this section. In such event, the landlord may seek removal of the tenant from the premises in the manner and with the notice prescribed by Chapter 7, Title 89, Mississippi Code of 1972.

(b) Any justice court judge or other judge presiding over a hearing in which a landlord seeks to remove a tenant for the nonpayment of rent shall abide by the provisions of the rental agreement that was signed by the landlord and the defaulting tenant.

(6) Disposition of personal property, including any manufactured home, of a tenant remaining on the landlord's premises after the tenant has been removed from the premises shall be governed by Section 89-7-35(2) or Section 89-7-41(2).

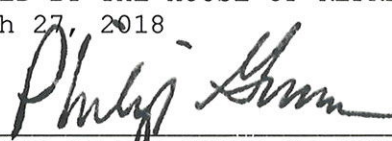
SECTION 8. This act shall take effect and be in force from and after July 1, 2018.

PASSED BY THE SENATE
March 27, 2018



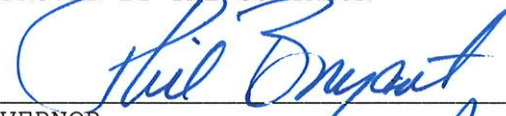
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 27, 2018



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR
April 12, 2018
6:01pm